

Law Clerk: Vivian Center

JS - 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Tri-V's Homes Inc., Victorio
Guico, Regina Guico, Clien Lester
Guico, Lesllyn Guico, Liezel
Cuico, and Vic Guico, Jr.,
Plaintiffs,

v.

United States Department of
Homeland Security and United
States Citizenship and
Immigration Services,
Defendants

CASE No. CV 08-06954 RGK (JCx)

Order and Judgment RE:

Court Trial

I. INTRODUCTION

On October 22, 2008, Plaintiffs Tri-V's Homes, Inc. ("Tri-V"), Victorio Guico ("Guico"), Regina Guico, Clien Lester Guico, Lesllyn Guico, Liezel Guico and Vic Guico, Jr. (collectively, "the Guico Family")(inclusively, "Plaintiffs") filed suit against Defendants United States Department of Homeland Security and United States Citizenship and Immigration Services (collectively, "Defendants" or

1 "CIS"). Plaintiffs allege that Defendants abused their discretion in
2 denying Plaintiffs' applications to extend their L-1A and L-2 visas.
3 By way of the Complaint, Plaintiffs seek declaratory judgment: (1)
4 adjudging and declaring that the actions by Defendants in denying
5 Plaintiffs' applications were unlawful; (2) ordering that the L-1A and
6 L-2 visa petitions be approved from May 15, 2007 through May 14, 2010;
7 (3) concluding that the evidence in the administrative record shows
8 that Guico's duties with Tri-V are executive in nature and that the
9 duties he carried out in the Philippines were equally
10 executive/managerial in nature, and that Tri-V is a 70% owned
11 subsidiary of a Philippines company; and (4) grant attorney's fees and
12 other further relief as the Court deems just and proper.

13
14 The Court conducted a bench trial. The matter was heard on trial
15 briefs submitted by both parties. The Court has reviewed the
16 administrative record and considered all the arguments and evidence
17 presented. Based on the credible evidence and the reasonable
18 inferences drawn from that evidence, the Court finds that Defendants
19 did not abuse their discretion in denying Plaintiffs' application.

20 21 **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

22
23 This opinion serves as the findings of fact and conclusions of
24 law required by Rule 52 of the Federal Rules of Civil Procedure. Any
25 finding of fact that actually constitutes a conclusion of law is
26 adopted as such, with the converse also being true.

27 28 **A. Findings of Fact**

- 1 1. Plaintiffs are citizens of the Philippines.(Certified
2 Administrative Record ("CAR")at 1165-1180.)
- 3 2. Tri-V is a U.S. company that provides residential care for the
4 elderly. (CAR 328.) As of November 2004, Tri-V had been operating
5 in the United States for less than one year. *Id.*
- 6 3. On November 26, 2004, Tri-V filed an L-1A intercompany transferee
7 petition on behalf of Guico. (CAR at 1165.) On May 17, 2006, CIS
8 approved the application, with a validity date from May 15, 2006
9 through May 14, 2007. *Id.*
- 10 4. At the same time, CIS accorded the Guico Family L-2 nonimmigrant
11 dependent status based on Guico's approved L-1 status. (CAR 1165-
12 1180.)
- 13 5. On April 24, 2007, Tri-V filed an I-129 petition ("Petition")
14 seeking to continue the employment of Guico and extend Guico's L-
15 1 status, as well as the status of the Guico Family. (CAR at 326-
16 333.)
- 17 6. Because the Guico Family have L-2 nonimmigrant status based on
18 Guico's L-1 status, the determination of the application to
19 extend Guico's status is determinative of the Guico Family's
20 status. (Supplemental CAR at 4.)
- 21 7. The Petition indicates that Guico has been the President of Tri-V
22 since 2006, responsible for the overall management and direction
23 of the company and its operation. (CAR at 331.) The Petition also
24 states that Guico served as the General Manager of Tri-V's
25 Philippine parent company, Tri-V's Marketing, Inc. ("Tri-V
26 Marketing") from 1986 to 2004. *Id.*
- 27 8. Tri-Vi Marketing primarily trades goods such as grocery products
28 on a wholesale and retail basis. (CAR at 631.)

- 1 9. The Petition states that Tri-V Marketing owns 70% of Tri-V, and
2 that this relationship existed during the preceding one-year
3 period of Guico's employment with Tri-V Marketing. (CAR at 332.)
- 4 10. With its Petition, Tri-V provided the following additional
5 supporting materials:
- 6 a. A letter, dated April 19, 2007, stating: (1) Tri-V Marketing
7 owns 70% of Tri-V; (2) Guico is responsible for translating
8 the company's plan of operation into an actual operating
9 business of running facilities that provide residential care
10 for elderly people; (3) due to Guico's efforts, Tri-V
11 acquired two residential facilities in California in less
12 than one year; (4) Guico initiated the hiring of five new
13 employees; (5) due to Guico's efforts, Tri-V expects that
14 Guico will move the company into the next level of
15 performance. (CAR at 339-340.)
- 16 b. Tri-V's Articles of Incorporation, which reflects Tri-V's
17 authority to issue 100 shares of common stock. (CAR at 341-
18 342.)
- 19 c. Stock certificate certifying that Tri-V Marketing owns 70 of
20 the 100 issued shares. (CAR at 343.)
- 21 d. Stock information sheet stating that Guico owns 70% of Tri-V
22 Marketing. (CAR at 600.)
- 23 e. An organizational chart showing Guico as the
24 President/General Manager of Tri-V. (CAR at 351.)
- 25 f. Tri-V's 2006 IRS Form 1120A and California Form 100 Tax
26 Returns. (CAR 356-418.)
- 27 g. Commercial leases signed by Guico as President, on behalf of
28 Tri-V. (CAR at 420-426.)

1 h. Other documentation of Tri-V's day-to-day business
2 operations. (CAR 427-584.)

3 11. On June 18, 2007, CIS issued a Request for Evidence ("RFE")
4 requesting that Tri-V submit evidence to show that Tri-V
5 Marketing paid for Tri-V. (CAR 85.) Specifically, CIS requested a
6 copy of the original wire transfers from Tri-V Marketing and any
7 other evidence, including cancelled checks or deposit receipts
8 showing the monetary amounts for the stock purchase. *Id.* The RFE
9 also stated that the originator(s) of the deposited or wired
10 money must be clearly shown and verifiable by name, with full
11 address and phone/fax number. (CAR at 86.) Additionally, the RFE
12 requested a copy of Tri-V's Notice of Transaction Pursuant to
13 California Corporations Code, Section 25102(f), showing the total
14 offering amounts of Tri-V Marketing relating to the purchase of
15 Tri-V. *Id.*

16 12. The RFE also requested further information about Guico's
17 managerial position at Tri-V, including a more detailed job
18 description and the percentages of time spent on each job duty.
19 (CAR at 86.) Additionally, the RFE requested further information
20 on whom Guico directs, including their job title and position
21 description. *Id.* The same information was requested with respect
22 to Guico's job at Tri-V Marketing. *Id.*

23 13. On September 4, 2007, Tri-V submitted the following documents in
24 response to CIS's request regarding Guico's employment with Tri-V
25 Marketing: (1) payroll statements showing Guico as the General
26 Manager of Tri-V Marketing from October 2002 to December 2004
27 (CAR at 93-120); (2) block and line organizational charts showing
28 that, as General Manager, Guico was in charge of all operations

1 of Tri-V Marketing (CAR at 122-123); (3) a list of Tri-V's five
2 employees; and (4) Plaintiffs' counsel's summary of Guico's
3 responsibilities at Tri-V Marketing (CAR at 88).

4 14. On September 4, 2007, Tri-V submitted the following documents in
5 response to CIS's request for evidence that Tri-V Marketing had
6 paid for the stock ownership of Tri-V: (1) a certification from
7 Tri-V Marketing's operation manager that Guico and Regina Guico
8 were each provided a \$6,000 trip budget to the United States in
9 July 2004 (CAR at 127); (2) a statement by Plaintiffs' counsel
10 that purchase of the 70% common stocks were made with \$10,000 in
11 cash that Guico and Regina Guico brought with them from the
12 Philippines (CAR at 89); (3) a bank statement showing a \$10,000
13 deposit into Tri-V's bank account on November 2, 2004 (CAR at
14 125); and (4) bank records showing that, from March 2006 to
15 November 2006, Tri-V Marketing wire transferred \$54,975 to Tri-V
16 (CAR at 138-143).

17 15. In response to CIS's request regarding Guico's duties at Tri-V,
18 Plaintiffs' counsel's September 4, 2007 letter summarized Guico's
19 responsibilities at the company. (CAR at 89-90.)

20 16. On November 5, 2007, CIS issued a Notice of Decision denying the
21 Petition for the following reasons: (1) Tri-V did not establish
22 that Guico had been, and would be, employed in an executive or
23 managerial position; and (2) the evidence did not establish that
24 Tri-V and Tri-V Marketing were qualifying organizations because:
25 (a) the documents failed to demonstrate that Tri-V Marketing
26 contributed cash funds to purchase Tri-V's common stock, and (b)
27 the submitted 2006 Federal Tax Return did not reflect that Tri-V
28 had issued stock. (CAR at 29-37.)

- 1 17. On December 4, 2009, Tri-V filed a Form I-290B, Notice of Appeal
2 or Motion. The application indicated that it was filing a
3 combined motion to reopen and reconsider the CIS decision. (CAR
4 at 16-17.) The accompanying letter requested that if the motion
5 was denied, CIS forward the appeal to the appropriate agency.
6 (CAR at 18.)
- 7 18. In support of its position, Tri-V supplemented its evidence by
8 submitting: (1) a list of the job duties performed by Guico, as
9 well as a those performed by the other employees (CAR at 40-42);
10 (2) copies of personnel records from the California Health and
11 Welfare Agency (CAR at 44-55); and (3) amended federal and state
12 tax forms, with statements from the tax preparer indicating that
13 she had inadvertently omitted the shareholders' information (CAR
14 at 57-71).
- 15 19. On December 5, 2007, the matter was forwarded to the
16 Administrative Appeals Office ("AAO"). (CAR at 1.)
- 17 20. At the AAO, Defendants considered the information contained in
18 the administrative record, as well as the supplemental
19 information submitted with Tri-V's Form I-290B. (CAR at 5-6, 10-
20 12.)
- 21 21. On May 20, 2008, Defendants issued its decision dismissing the
22 appeal. Defendants' decision was made on three independent bases:
23 (1) Tri-V had failed to establish that Guico would primarily
24 perform managerial or executive duties; (2) Tri-V had failed to
25 provide evidence that it had a qualifying relationship with the
26 foreign employer (i.e., Tri-V Marketing); and (3) Tri-V had
27 failed to establish that Guico's overseas position was primarily
28 managerial or executive in nature. (CAR 4- 14.)

1
2 **B. Conclusions of Law**

3
4 Plaintiffs challenge Defendants' denial of Tri-V's Petition. The
5 Court finds that Defendants did not abuse their discretion in denying
6 Tri-V's request because Plaintiffs failed to adequately show that: (1)
7 Guico would be employed by Tri-V in a primarily managerial or
8 executive capacity; (2) Guico was employed by Tri-V Marketing for at
9 least one continuous year in a managerial or executive position; and
10 (3) Tri-V and Tri-V Marketing were qualifying organizations.
11

12 1. Jurisdiction

13
14 According to the Administrative Procedure Act ("APA"), a person
15 may seek legal review of an agency action except to the extent
16 statutes preclude judicial review or the agency action is committed to
17 agency discretion by law. 5 U.S.C. § 701(a). If the statute contains
18 judicially manageable standards for judging how and when an agency
19 should exercise its discretion, the agency action is reviewed to
20 determine if it is "arbitrary, capricious, an abuse of discretion, or
21 otherwise not in accordance with law." *Id.*
22

23 8 U.S.C. § 1184 permits admission into the United States any
24 alien as a nonimmigrant, including those who apply for nonimmigrant
25 status under 8 U.S.C. § 1101(a)(15)(L). The denial of such
26 applications are subject to the jurisdiction of the district courts.
27 *See Brazil Quality Stones v. Chertoff*, 531 F.3d 1063, 1066 (9th Cir.
28 2008).

2. Standard of Review

Under the APA, a district court may set aside an agency decision if the decision is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" 5 U.S.C. § 706(2)(A). This is a deferential standard, under which a district court will reverse the agency's decision only if it violated the law or committed a clear error in judgment. See *Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 281 (1974). Under the APA, review is limited to the administrative record of the proceedings below. *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984).

3. Discussion

8 U.S.C. § 1184(a) permits the admission into the United States any alien as a nonimmigrant "for such time and under such conditions as the Attorney General may by regulations prescribe." One such class of nonimmigrant alien is the L-1, which is described as "an alien who, within 3 years preceding the time of his application . . . has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer of a subsidiary or affiliate thereof in a capacity that is managerial, executive . . ." 8 U.S.C. § 1101(a)(15)(L). The burden of proving eligibility for this immigration benefit rests with the applicant or petitioner to show by a

1 preponderance of the evidence. 8 U.S.C. § 1361.

2
3 Plaintiffs' initial application for L-1 status had been approved
4 by CIS with a validity date from May 15, 2006 through May 14, 2007.¹
5 However, on November 5, 2007, CIS denied Plaintiffs' application for
6 extension of the L-1 visa. The matter was then forwarded to the AAO.
7 The Administrative Record shows that Defendants properly reviewed the
8 information contained in the Petition (Findings of Fact ("FOF") Nos.
9 7, 9 and 10), as well as the information submitted in response to
10 CIS's RFE (FOF Nos. 13, 14 and 15). Additionally, Defendants
11 considered further documentation ("Supplemental Documents") submitted
12 by Tri-V in conjunction with its Form I-290B. (FOF No. 18.) On May 20,
13 2008, Defendants dismissed the appeal. (FOF No. 21.)

14
15 As a threshold issue, Plaintiffs argue that they timely filed a
16 Motion to Reopen/Reconsider with CIS. Therefore, Plaintiffs argue that
17 Defendants should have considered the motion and supporting
18 supplemental evidence before forwarding the matter to the AAO for
19 consideration on appeal. Plaintiffs contend that, in light of this
20 error, the Court should remand the Petition to CIS for consideration
21 of the supplemental evidence.

22
23 Plaintiffs also argue that Defendants erroneously dismissed the

24
25 ¹ CIS also granted the Guico Family's application for L-2
26 status with the same validity dates. As stated in Finding of Fact
27 No. 6, because the Guico Family status is dependent upon Guico's
28 status, determination of Guico's status directly bears on the
Guico Family status. Although the Court's discussion and decision
will apply to both Guico and the Guico Family, the Court will
hereinafter refer only to Tri-V's application made on behalf of
Guico.

1 appeal. Specifically, Plaintiffs contend that the evidence submitted
2 by them: (1) establishes Guico as an executive; (2) shows that Guico
3 had been employed as an executive by Tri-V Marketing within the
4 relevant time frame; and (3) demonstrates that Tri-V and Tri-V
5 Marketing were qualifying organizations.

6
7 For the following reasons, the Court disagrees and finds that
8 Defendants did not abuse their discretion in dismissing Plaintiffs'
9 appeal.

10
11 a. *Defendants Did not Abuse Their Discretion by Treating the*
12 *Matter as an Appeal*

13
14 The regulations prescribe procedures for both appeals and
15 requests to reopen or reconsider unfavorable decisions. 8 C.F.R. §§
16 103.3 ("Section 103.3") and 103.5. It appears that Defendants treated
17 Tri-V's Form I-290B as an appeal.

18
19 On the Form I-290B, Tri-V checked the box indicating a request to
20 reopen or reconsider. (CAR at 16.) However, in its accompanying brief,
21 Tri-V expressly asks CIS to reopen the case, or "[i]n the alternative,
22 if the motion is denied then please forward the appeal to the
23 appropriate agency." (CAR at 18.) Moreover, Section 103.3, which
24 governs appeals, states the following: (1) the official who made the
25 unfavorable decision being appealed must first review the appeal (8
26 C.F.R. § 103.3(a)(2)(ii)); (2) if the official decides to take
27 favorable action, he may treat the appeal as a motion to reopen or
28 reconsider and take such action (8 C.F.R. § 103.3(a)(2)(iii)); and (3)

1 if the official decides not to take favorable action, he shall
2 promptly forward the appeal and the related administrative record to
3 the appellate body (8 C.F.R. § 103.3(a)(2)(iv)). The procedures
4 specified in Section 103.3 mirror the procedures expressly requested
5 by Tri-V.

6
7 In light of Tri-V's request to forward the appeal to the
8 appropriate agency if the motion is denied, as well as Section
9 103.3(2), which specifies the same procedure requested by Plaintiffs,
10 the Court finds that Defendants did not clearly err in treating the
11 application as an appeal. The evidence shows that, having treated the
12 application as an appeal, Defendants complied with the relevant
13 regulations. Therefore, the Court finds that Defendants did not abuse
14 their discretion in forwarding the matter to the AAO for consideration
15 on appeal.

16
17 b. *Defendants Did not Abuse Their Discretion by Dismissing the*
18 *Appeal*

19
20 Defendants dismissed Tri-V's appeal on the following grounds: (1)
21 Tri-V failed to establish that Guico had been employed by Tri-V
22 Marketing in a managerial or executive capacity, and would be employed
23 by Tri-V in a primarily managerial or executive capacity; and (2) Tri-
24 V failed to provide evidence that Tri-V and Tri-V Marketing were
25 qualifying organizations. (FOF No. 21.) The Court addresses each
26 ground for dismissal in turn.

27
28 i. *Managerial or Executive Duties*

1
2 To qualify for L-1 classification, the alien beneficiary must
3 have been continuously employed in a managerial or executive capacity
4 by an overseas entity for one year within the three years prior to the
5 alien's application for admission to the United States. See 8 U.S.C.
6 §1101(a)(15)(L). Additionally, the alien beneficiary must be
7 transferring to the United States entity to work primarily in a
8 managerial or executive capacity for that U.S. entity. *Id.* The burden
9 of establishing these requirements is on the alien beneficiary and his
10 employer. See *Brazil Quality Stones, Inc. v. Chertoff*, 531 F.3d 1063,
11 1069 (9th Cir. 2008).

12
13 According to the statute, the term "managerial capacity" means
14 that the employee primarily: (1) manages the organization or a
15 component of the organization; (2) supervises or controls the work of
16 other supervisory, professional or managerial employees, or manages an
17 essential function within the organization; (3) has the authority to
18 hire and fire or recommend employees over which he directly
19 supervises; and (4) exercises discretion over the day-to-day operations
20 of the activity or function for which the he has authority. See 8
21 U.S.C. § 1101(a)(44)(A). The term "executive capacity" means the
22 employee primarily: (1) directs the management of the organization or a
23 major component or function of the organization; (2) establishes the
24 goals and policies of the organization, component, or function; (3)
25 exercises wide latitude in discretionary decision-making; and (4)
26 receives only general supervision or direction from higher level
27 executives, the board of directors, or stockholders of the
28 organization. See 8 U.S.C. § 1101(a)(44)(B).

1 Upon review of the Administrative Record, the Court finds that
2 Defendants did not abuse their discretion by dismissing the appeal for
3 failure to establish the managerial or executive requirement.
4

5 The Regulations require a "detailed description of the services
6 to be performed" by the employee. 8 C.F.R. § 214.2(1)(3)(ii). Evidence
7 in the record shows that the information initially provided fell far
8 short of the standard prescribed by the Regulation. (See FOF Nos. 7
9 and 10.) Therefore, CIS requested further information about Guico's
10 executive position at Tri-V and Tri-V Marketing, including a more
11 detailed job description and the percentages of time spent on each job
12 duty. (FOF No. 12.) While Tri-V submitted additional information,
13 Defendants ultimately found that the information lacked sufficient
14 specificity and documentary evidence. (CAR 7 and 13.) Upon review of
15 the relevant information, the Court agrees, and finds that the
16 descriptions fail to indicate Guico's day-to-day duties and
17 responsibilities. Moreover, the Record clearly shows that Tri-V never
18 provided information regarding percentages of time spent on each job.
19 As stated by the Regulations, "[where an applicant or petitioner does
20 not submit all requested additional evidence and requests a decision
21 based on the evidence already submitted, a decision shall be issued
22 based on the record. Failure to submit requested evidence which
23 precludes a material line of inquiry shall be grounds for denying the
24 application or petition." 8 C.F.R. § 103.2(b)(14). The Court finds
25 that the failure to provide the specific information requested
26 precludes a material line of inquiry. In light of the foregoing, the
27 Court finds that Plaintiffs have failed to meet their burden of
28 showing that Guico's responsibilities at Tri-V and Tri-V Marketing

1 were primarily managerial or executive.

2
3 *ii. Qualifying Relationship With Foreign Employer*
4

5 The implementing regulations require an L-1A petitioner to submit
6 evidence establishing that the petitioner and the organization from
7 which the foreign national will be transferring are "qualifying
8 organizations."² 8 C.F.R. § 214.2(l)(3)(i). A qualifying organization
9 is a parent, branch, subsidiary or affiliate of an overseas legal
10 entity that is currently doing business outside the United States. See
11 8 C.F.R. § 214.2(l)(1)(ii)(G). "Subsidiary" is defined in pertinent
12 part as a corporation "of which a parent owns, directly or indirectly,
13 more than half of the entity and controls the entity." 8 C.F.R. §
14 214.2(l)(1)(ii)(K).
15

16 According to the Petition, Tri-V Marketing and Tri-V are
17 qualifying organizations by virtue of Tri-V Marketing's status as a
18 Philippines company and its 70% ownership of Tri-V. (FOF Nos. 9 and
19 10.) Plaintiffs' primary supporting evidence are: (1) a November 2004
20 stock certificate; (2) a November 2004 bank statement showing a
21 \$10,000 deposit into Tri-V's account; and (3) a copy of Tri-V's 2006
22 Form 1120-A U.S. Corporation Short-Form Income Tax Return ("Tax
23 Return"). (FOF Nos. 10 and 14.)
24

25 ² At the time Guico's L-1A visa was initially granted, Tri-V
26 had been designated a "new office" because it had not been
27 conducting business in the United States for more than one year.
28 See 8 C.F.R. § 214.2(l)(1)(ii)(F). When a "new office" files for
an L-1A extension, it must show continuation of a qualifying
organization with an overseas entity. 8 C.F.R. §
214.2(l)(14)(ii)(A).

1 The Court's review of the Administrative Record shows that Tri-
2 V's supporting evidence is weak and contradictory. First, a stock
3 certificate alone, does not sufficiently establish that Tri-V
4 Marketing maintains ownership and control over Tri-V.³

5
6 Second, the bank statement fails to indicate from where the
7 \$10,000 originated. (See CAR at 125.) In its Response to the RFE, Tri-
8 V failed to produce any of the specific evidence requested by CIS.
9 Instead, Tri-V submitted a letter stating that Tri-V Marketing sent
10 cash with Guico and his wife on a trip to the United States to
11 purchase Tri-V stock. The Administrative Record clearly shows that
12 Defendants considered this evidence. (FOF No. 20.) However, Defendants
13 found this evidence not credible. (See CAR at 12.) In light of Tri-V's
14 failure to submit any other evidence on this matter, the Court agrees
15 with Defendants and finds that the bank statement fails to establish
16 that Tri-V Marketing purchased the 70% interest in Tri-V.

17
18 Finally, Tri-V's 2006 Tax Return contradicts Tri-V's assertion
19 that it is a qualifying organization. First of all, the Tax Return
20 indicates that no single individual or entity owns more than 50% of
21 Tri-V's stock. (CAR at 357.) Moreover, the Tax Return fails to assign
22 a value to Tri-V's common stock. *Id.* Second, the tax form used by Tri-
23 V is prohibited for use by a corporation having foreign shareholders

24
25 ³ Defendants state, and the Court agrees, that items such as
26 corporate stock certificate ledgers, stock certificate registry,
27 corporate bylaws, and minutes of relevant annual shareholder
28 meetings must be examined to determine the total number of shares
issued, the exact number issued to the shareholder, and the
subsequent percentage ownership and its effect on corporate
control. (See CAR at 10.) Plaintiffs submitted none of these
documents.

1 that own 25% or more of its stock. See 2006 IRS Form 1120-A
2 (instructions) at 2. As part of its Supplemental Documents, Tri-V
3 included an amended tax return, and an explanation by the tax preparer
4 stating that shareholders' information had been inadvertently omitted.
5 (FOF No. 18.) However, as stated by Defendants, this document does not
6 resolve the underlying inconsistency, as it fails to explain why a
7 form that was inappropriate for use by a foreign-owned corporation was
8 used in the first place. (See CAR at 12.) Moreover, based on the
9 timing of the amended tax return, it does not carry significant
10 evidentiary weight and instead, raises serious questions regarding the
11 truth of the facts asserted.

12
13 In light of the discussion above, the Court agrees that the
14 record is not persuasive in establishing that Tri-V and Tri-V
15 Marketing are qualifying organizations. Therefore, the Court finds
16 that Defendants did not abuse their discretion in dismissing the
17 appeal on this ground.

18
19 Based on the foregoing, the Court concludes that under the APA,
20 Plaintiffs have failed to show that CIS's decision to deny Plaintiffs'
21 Petition is arbitrary, capricious, an abuse of discretion, or
22 otherwise not in accordance with law.

1 **III. CONCLUSION**

2
3 The Court grants judgment in favor of Defendants.
4

5 
6

7 July 29, 2009
8 Date

R. Gary Klausner
U.S. District Court Judge